

Frequently Asked Questions about the Role of Complainants and Recipient Policy Paper

1. What is Title VI?

Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit recipients of federal financial assistance from discriminating on the basis of race, color or national origin – both intentional discrimination and discriminatory effects from facially neutral policies. Federal regulations allow filing of complaints alleging discrimination and place investigative responsibility on the relevant federal agency. The U.S. Environmental Protection Agency’s (EPA) Title VI implementing regulations are codified at 40 C.F.R. Part 7. The EPA’s Office of Civil Rights (OCR) reviews Title VI complaints in accordance with 40 C.F.R. Part 7, Subpart E (§§ 7.105-7.135).

2. How does EPA evaluate and resolve a Title VI complaint?

Pursuant to the EPA’s nondiscrimination regulations, once OCR receives a complaint, OCR conducts a preliminary review of the complaint for acceptance, rejection or referral to the appropriate agency. OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA’s nondiscrimination regulations. First, the complaint must be in writing. See 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that if true, may violate the EPA’s nondiscrimination regulations (e.g., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, the complaint must be filed within 180 calendar days of the alleged act. See 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. See 40 C.F.R. § 7.15.

Please note that acceptance of a complaint for investigation in no way amounts to a decision on the merits. Rather, it means the complaint has met the four jurisdictional criteria. It does not constitute an assessment as to the veracity of the allegations or represent a conclusion as to whether any violation of the federal civil rights laws has occurred.

3. Do complainants have to prove the allegations in their complaint?

No. A Title VI complainant is not like a plaintiff in court. Rather, a complainant’s role is to report what he or she believes is an act violating Title VI by an entity receiving federal financial assistance (the recipient) to the associated agency providing such assistance, in this case the EPA. The EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead the EPA investigates allegations about its recipient, and reaches a conclusion regarding whether a violation of Title VI has occurred.

4. Does OCR engage with complainants in the complaint process?

The responsibility to investigate allegations raised in Title VI complaints rests with the agency providing the federal financial assistance. A complainant’s role is to report what he or she believes is an act violating Title VI. Prior to issuing a jurisdictional determination, the EPA may seek clarification from complainants and during investigations the EPA often asks complainants for additional information. The EPA’s regulations, similar to those of other federal

agencies, do not prescribe a role for the complainant once he or she has filed a complaint. Under this policy paper, the EPA would initiate consultation with complainants, as appropriate, to as a source of additional information to be considered as part of the Agency's evaluation of whether a settlement is in the Agency's best interest. Under this policy paper, the EPA would initiate consultation with complainants, as appropriate, to as a source of additional information to be considered as part of the Agency's evaluation of whether a settlement is in the Agency's best interest

5. Will OCR engage any other stakeholders, such as, industry, in the complaint process?

The EPA will consider any relevant information, regardless of the source, that helps advance its evaluation of whether there has been a violation of Title VI of the Civil Rights Act of 1964. This does not mean that the EPA will affirmatively seek such information in every case because it retains the enforcement discretion to structure its investigation of civil rights allegations.

6. What action is the EPA taking today and why is it significant?

The EPA has made improving its civil rights program a priority and recognizes that its enforcement of Title VI is an important tool in its efforts to protect against discrimination and ensure that recipients of EPA financial assistance do not discriminate in implementing programs and activities.

Today, the EPA is finalizing a policy paper entitled, "Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process." The policy discusses the EPA's current thinking about how to expand the roles of complainants and recipients in the Title VI complaints process. For instance, the EPA wants to encourage both recipients and complainants to participate in alternative dispute resolution (ADR). In fact, as long as its budget permits, the EPA is committed to funding mediation services, in appropriate cases.

7. Why is the EPA offering ADR as an option for Title VI complaints?

Once the EPA accepts a Title VI discrimination complaint for investigation, the implementing regulations provide that the agency must "attempt to resolve complaints informally whenever possible." Accordingly, the EPA will entertain, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process and the involvement of affected stakeholders.

ADR, as an informal resolution option, offers Title VI complainants and recipients several advantages. First, ADR participants have much greater control over the process for resolving their dispute. Second, ADR participants interact through direct discussions with each other, and have an opportunity to share information, clarify misunderstandings, and develop a range of creative options that could lead to a solution. Third, ADR participants may be able to develop a solution much faster than through traditional administrative processes. Finally, and perhaps most importantly, participants in an ADR process have far greater control over the outcome of their dispute than they would in an administrative process; they can tailor the resolution to fit their needs and interests and reach solutions that may not otherwise be available through a traditional Title VI settlement.

8. Does this policy change or substitute for law, regulation, or any other legally binding requirement?

No. This document does not change or substitute for any law, regulation, or any other legally binding requirement; is not legally enforceable; and does not impose any legally binding requirements.

9. Did the EPA seek public review and comments on the policy document?

Yes. The EPA is committed to ensuring that all stakeholders have ample opportunity to provide feedback. Therefore, the policy document was published on OCR's website on January 23, 2013, for 30-days and then published in the Federal Register with a 90-day comment period. OCR also hosted two teleconference call sessions to ensure engagement with interested stakeholders and created a Listserv of interested stakeholders for future outreach and public engagement efforts regarding Title VI matters.